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REVENUE & DISASTER MANAGEMENT DEPARTMENT

NOTIFICATION

The 30th July 2010

S. R. O. No. 319/2010—The following draft of certain rules further to amend the Orissa Irrigation Rules, 1961 which the State Government propose to make in exercise of the powers conferred by Section 53 of the Orissa Irrigation Act, 1959 (Orissa Act 14 of 1959), is hereby published as required by sub-section (1) of the said section for the information of all persons likely to be affected thereby, and notice is hereby given that the said draft will be taken into consideration on or after expiry of a period of thirty days from the date of their publication in the *Orissa Gazette*.

Any objection or suggestion which may be received from any person with respect to the said draft before the expiry of the period specified above will be considered by the State Government.

DRAFT

1. (1) These rules may be called the Orissa Irrigation (Amendment) Rules, 2010.

(2) They shall come into force on the date of their publication in the *Orissa Gazette*.

2. In the Orissa Irrigation Rules, 1961 (hereinafter referred to as the said rules), in rule 2,—

(i) in clause (d), for the words and figure “Commercial Establishment Act, 1952”, the words and figure “Orissa Shops and Commercial Establishments Act, 1956” shall be substituted;

(ii) in clause (dd), for the words and semicolon “Government water source; and”, the words and semi-colon “Government water source and irrigation works;” shall be substituted; and

(iii) after clause (h), the following clause shall be inserted, namely :—

‘(hh) “Schedule” means a Schedule appended to these rules;’.

3. In the said rules, in Rule 23, for the words “Schedule annexed to these rules”, the word and numerical “Schedule I” shall be substituted.

4. In the said rules, for Rule 23-A, the following rule shall be substituted, namely:—

“23-A. Drawal of water from Government water source.—(1) When any industrial, commercial or other establishment proposes to draw or lift water from a Government water source,—

(a) the Executive Engineer may earmark the bed and off-shore lands of the said water source free from encumbrances and set it apart for that purpose;

(b) the Executive Engineer shall order installation of a Flow Meter or a suitable measuring device within a period of ninety days from the date of such order at the cost of the concerned industrial, commercial or other establishment to measure the quantum of water to be drawn from the water source and the Flow Meter or Measuring Device, as the case may be, shall be installed under the direct supervision of the Executive Engineer or an Engineer not below the rank of an Assistant Engineer to be specifically authorised by him, failing which, the water-supply shall not be made;

(c) the Flow Meter or Measuring Device, as the case may be, will be certified and checked about its accuracy from time to time by the Weights and Measures Organisation of the State Government or any other organization as the State Government may, by notification, specify from time to time to ensure accurate measurement of quantum of water for the purpose of collection of fee; and

(d) the industrial, commercial or other establishment shall be responsible for smooth maintenance and upkeeping of the Flow Meter system under the general supervision of the Executive Engineer, who may, for cross-checking of the Flow Meter or suitable measuring device, install an additional Flow Meter or suitable measuring device, as the case may be, at a suitable place along the pipe line in the premises of the concerned establishment .

(2)The Government in its Water Resources Department shall be the competent authority to grant licence under the provisions of the Act to industrial, commercial and other establishments on application and in the following manner, namely :—

(a) the application shall be submitted in Form 'J' by the industrial, commercial or other establishment personally or by registered post to the Secretary of the Water Resources Department or any other officer authorized by the said Secretary for drawing and lifting of water from Government water source, alongwith a processing fee of one thousand rupees in the shape of Bank Draft drawn in favour of Secretary or any other officer of the Water Resources Department authorized by the Secretary in writing ;

(b) the applicant shall furnish with the application a Bank Draft from a Nationalized bank, representing a security deposit for an amount calculated at the rate of one lakh and fifty thousand rupees for every cusec of water applied, drawn in favour of the officer referred to in clause (a), and if the application is refused the amount will be refunded to the applicant or if the application is allowed the same will be adjusted against the demand for the use of water;

(c) on receipt of the application, the Secretary of the Department shall send the same to the Water Allocation Committee constituted for the purpose, for its consideration, and the Committee shall, after such enquiry as it may consider necessary, return the application alongwith its recommendation either for grant or for refusal, preferably within a period of three months ;

(d) on receipt of the recommendation, the Government in its Water Resources Department shall make an order either to refuse the application or to allow it, wholly or partly, with such conditions and restrictions as it may specify ;

(e) the order shall be communicated in writing to the applicant as far as practicable within a period of six months from the date of receipt of the application and where the application is allowed, the applicant shall be asked to execute an agreement in Form 'K' with the concerned Executive Engineer within the date specified in the said order and the said agreement shall be binding on both the parties and shall be executed at the cost of the applicant and that the drawing and lifting of water from Government water source shall be made only after execution of the agreement ;

(f) licence fees shall be charged and collected at the rate per unit or quantity of water drawn or allocated as specified in Schedule II and the State Government may, in the public interest, by notification in the Official Gazette, revise the rates of fees specified in the said Schedule as and when considered necessary ;

(g) the State Government in its Water Resources Department may grant concession from the payment of licence fees to any industrial, commercial or other establishment as may be considered necessary pursuant to Industrial Policy Resolutions of the State ;

(h) the Executive Engineer shall assess the fees to be charged per unit or quantity of water drawn or allocated whichever is higher and where drawal of water is more than the allocated quantity, without prejudice to charging a penal rate at six times the rate prescribed in Schedule II on the quantity of excess drawal in addition to the fees charged for the allocated quantity, such excess drawal shall not be permissible beyond six months, within which, the licensee shall have to apply for a higher allocation of water with reasons and where the licensee fails to so apply for such higher allocation or where the licensee is refused for such higher allocation, the agreement shall be liable to cancellation and the water-supply shall be stopped thereafter;

(i) the Executive Engineer shall assess the fees to be charged per unit or quantity of water drawn or lifted and, accordingly, issue demand notice within the first week of every month in Form 'V' and the assessee shall make payment of the required fees within that month and, on default, monthly compound interest at the rate of two per centum shall be charged;

(j) in case of any defect or non-functioning of the Flow Meter, the licensee shall bring the fact to the notice of the concerned Executive Engineer forthwith and take appropriate steps to remove the defects in the Meter or for replacement thereof within a period of three months and in such cases the fees shall be charged on the quantity of water allocated for the said period of three months or till the defect in the Meter is removed or the Meter is replaced, as the case may be, whichever is earlier, and where the licensee fails to bring the defect or non- functioning of the Meter to the notice of the Executive Engineer or fails to remove the defects in the Meter or to replace the same, as the case may be, within a period of three months, the agreement shall be liable to cancellation and thereafter the water-supply shall be stopped.

(3) When a person is reasonably suspected of having committed an offence by unauthorized use of water from a Government water source punishable under the Act, the Executive Engineer may, after making an inquiry, forward the case to the Court of competent jurisdiction .

(4)(a) The State Government may in any case or class of cases grant total or partial exemption from payment of licence fees for any specified period in the interest of industrial or commercial developments in the State.

(b) An application for total or partial exemption of licence fees shall be made to the Executive Engineer having jurisdiction .

(c) The Executive Engineer on receipt of the application, may after making such inquiry as he considers necessary, furnish a report containing justification for exemption or the extent of such exemption, if any, alongwith the application to the concerned Chief Engineer, Water Resources Department and the Chief Engineer after recording his opinion on the application shall forward the same to the State Government in its Water Resources Department for taking final decision in the matter . ” .

5. In the said rules, for Rule “26”, the following rule shall be substituted, namely:—

“26. Supply of water for any purpose other than irrigation—For supply of water from any irrigation work for any purpose other than irrigation ,the provisions laid down in Rule 23- A shall apply *mutatis mutandis*, subject to the provisions in Rule 23.”.

6. In the said rules, Rule 27 shall be deleted.

7. In the said rules, the “ SCHEDULE” shall be renumbered as “ SCHEDULE I” thereof—and
(a) in SCHEDULE I as so renumbered, the sub-heading “C” along with its provisions shall be omitted; and

(b) after SCHEDULE I as so renumbered, the following SCHEDULES shall be inserted, namely :—

“ SCHEDULE II

[See Rule 23-A (2) (f)]

Rate of licence fee for industrial/commercial use of water from Government water sources

Item No	Purpose for which supply is given	Rate in Rs.	Per
(1)	(2)	(3)	(4)
1.	Bricks or tile making	25.00	1000 bricks or tiles
2.	(i) For water actually used and consumed for industrial/ commercial purpose—		
	Slab I—Consumption \leq 5 cusec	3.40	1000 litre (1m ³)
	Slab II—Consumption $>$ 5 cusec	4.50	
	(ii) For water used for Hydro Power Generation	0.01	1 KWH
3.	For bulk supply to Municipalities and Notified Area Councils and other local authorities for drinking, washing, etc.	0.20	1000 litre (1m ³)
4.	Construction of Commercial buildings	5.30	1000 Litre
5.	For subsoil water actually used and consumed for industrial/commercial purpose—		
	Slab I—Consumption \leq 5 cusec	6.80	1000 litre (1m ³)
	Slab II —Consumption $>$ 5 cusec	9.00	

SCHEDULE III

(See Rule 23)

Special rates for purposes other than irrigation

Item No	Purpose for which supply is given	Rate in Rs.	Per
(1)	(2)	(3)	(4)
1.	Bricks or tile making	30.00	1000 bricks or tiles
2.	(i) For water actually used and consumed for industrial/ commercial purpose—		
	Slab I – Consumption \leq 5 cusec	4.20	1000 litre (1m3)
	Slab II — Consumption $>$ 5 cusec	5.60	
	(ii) For water used for Hydro Power Generation	0.01	1 KWH
3.	For bulk supply to Municipalities and Notified Area Councils and other local authorities for drinking, washing, etc.	0.25	1000 litre (1m3)
4.	Construction of Commercial buildings	7.10	1000 litre (1m3)
5.	For filling tanks	0.10	1000 litre (1m3)
6.	For filling tanks mainly for drinking purposes	0.05	1000 litre (1m3)

8. In the said rules, for Form 'J', the following Form shall be substituted, namely :—

"FORM – 'J'

[See Rule 23-A(2) (a) and Rule 26]

Application for drawing/lifting of water from Government water source/Irrigation works
to be used for Industrial/Commercial/other purposes

1. GENERAL

(i) Name of the Applicant

(ii) Purpose (Industrial/Commercial/ Domestic/ Other(Specify)

2. INDUSTRY

(i) Type

(ii) Capacity—

Present

Future Expansion Plan

(iii) Location

(Attach coloured location map on toposheet identifying industry, colony (Six copies)

(iv) Whether MoU has been signed with Government (Copy of Report)

(v) Details regarding availability of land

(vi) Recommendation of concerned Department of Government of Orissa.

3. REQUISITION OF WATER

(i) Quantity Indented

(ii) Phasewise Requirement

(Attach a note justifying the volume of water required)

(Certificate from the Competent Authority/concerned Department of Government to be attached in support of the requirement of the quantum of water)

(iii) Water Management Plan (Attach a copy)

(a) Whether any recycling is proposed

(b) Waste water generated

(c) Quantity of effluent

(d) Method of disposal

(Attach a note on disposal of waste water and its effect on environment)

(iv) Phasewise date from which water is required

4. SCHEME

(i) Source

(ii) Layout of drawal mechanism

(iii) Attach a copy of proposal; if any

Enclosed : (i) Location map of proposed Industry

(ii) Note on status of clearance of proposed Industry

(iii) Recommendation of concerned Department to Government of Orissa

(iv) Water Management Plan—

(a) Note on calculation of quantity of water required

(b) Note on disposal of waste water generated and its effect on environment

(c) Scheme of drawal of water

(d) Lean period water management

I, the undersigned require water for the purpose noted above and agree to pay the required special water rate/license fee for it at the rate specified for the purpose. I understand that water will be supplied at such times and in such quantities as the Executive Engineer may by order direct and that any sum due from me shall be recoverable as arrears of land revenue. I also know that no suit for compensation lies either against the State Government or its officers in connection with my application for supply of water and any order passed thereon.

The water so taken for use will not be in any way detrimental to the interest of general public and their riparian rights and to the environment.

I agree to abide by the conditions that may be imposed by the Government in Water Resources Department regarding drawal and use of water from Government source/Irrigation works.

Signature of the Applicant” .

9. In the said rules, for Form 'K', the following Form shall be substituted, namely :—

“ FORM 'K' ”

[See Rule 23-A (2)(e) & Rule 26]

Agreement for supply of water for the purpose of Industrial/Commercial use

This Agreement is made on theday of Two thousandBetween Shri..... son of.....resident of village.....P. S..... district..... by profession, the authorized representative of..... (Name of the industry) (hereinafter called the “Applicant”) of the first part AND (1) Shri son of..... resident of village..... P.Sdistrict.....by profession and (2) Shri.....son of.....resident of village.....P.S.....district.....by profession..... (hereinafter referred to as the “Sureties”) of the second part; AND the Governor of Orissa which expression unless repugnant to the context, shall include his successors and assigns (hereinafter called “the Government”) of the third part;

WHEREAS the applicant has made an application for supply of water from Government water source /Irrigation works for the period as mentioned in the Schedule; and (here to annexed)

WHEREAS the sureties have agreed to stand surety for payment of rates charged for such supply in the manner hereinafter appearing and the Government has agreed to supply water for the purpose specified in the schedule annexed hereto—

SCHEDULE

Purpose for which water will be supplied	Volume of water, if any	Period of supply	The place at which it will be supplied
(1)	(2)	(3)	(4)

NOW THIS AGREEMENT witnesseth as follows :

1. In pursuance of the said agreement and in consideration of supply of water to be made to the applicant, the applicant and the sureties hereby jointly and severally covenant with the Government as follows :

(a) The applicant shall pay Rs.....at the rate of Rs.....per on or before..... to

(b) The applicant shall make suitable arrangement to take the water from the Government water source/Irrigation works at which it will be supplied.

(c) The applicant shall not use the water supplied to him for any purpose other than that which is specified in the said Schedule.

2. If the sum aforesaid or any part thereof, is not paid on or before the date specified in this agreement it shall become payable at once (unless the Government sanctions for special reason an extension of time) and the applicant and the sureties shall be liable jointly and severally to pay the same with compound interest at the rate of two per cent *per mensem* from the date of default. All amount due to the Government under the terms of these presents shall if not paid in time, be recoverable as a public demand under the Orissa Public Demands Recovery Act, 1962 .

3. (i) The applicant shall be liable for criminal and civil action if by drawal of water, the rights of any third party are affected and shall indemnify the Government against all claims for damage preferred by person or persons affected by the permission granted.

(ii) The applicant shall not without prior permission in writing from the Government lay pipe line on Government or communal lands. If the pipe lines have to pass through Government lands permission of the Government for this shall be taken separately which may be granted subject to the protection of rights of Government or community, as the case may be.

(iii) The applicant shall not draw or lift water more than the quantity mentioned in the requisition or order and not exceeding the volume mentioned in the Schedule except with the prior approval of the Government. The Executive Engineer shall assess the fees to be charged as per Unit /quantity of water drawn or allocated whichever is higher. If drawal is more than the allocation, a penal rate at six times the rate specified in Schedule II and III shall be charged on the quantity of excess drawal, in addition to the normal bill on allocated quantity. The excess drawal is permissible for a maximum period of six months, within which, the licensee shall have to apply for a higher allocation of water with reasons and where the licensee fails to so apply for such higher allocation or where the licensee is refused for such higher allocation, the agreement shall be liable to cancellation and the water supplied shall be stopped thereafter .

(iv) The permission granted shall not be deemed to exempt the applicant from liability to payment of water charges lawfully assessable at the rate as may be prescribed by Government from time to time.

(v) Government reserves the right to suspend or cancel the permission in case of violation of any of the covenants.

(4) The applicant at his own cost shall install a Flow Meter or a suitable measuring device for measurement of water drawn or lifted by him from the Government water source/Irrigation works as per the procedure laid down in Rule 23-A(b). The Executive Engineer shall visit the location of drawal or lifting of water, verify the quantities of water drawn or lifted by the applicant and ensure such control as may be necessary for administering the drawal or lifting of water. Assessment of water rate shall be made as per the quantity of water drawn or allocated whichever is higher. In case of any defect or non-functioning of the Flow Meter, the licensee shall bring the fact to the notice of the concerned Executive Engineer forthwith and take appropriate steps to remove the defects in the Meter or for replacement thereof within a period of two months and in such cases the fees shall be charged on the quantity of water allocated for the said period of three months or till the defect in the Meter is removed or the Meter is replaced, as the case may be, whichever is earlier, and where the licensee fails to bring the defect or non- functioning of the Meter to the notice of the Executive Engineer or fails to remove the defects in the Meter or to replace the same, as the case may be, within the stipulated period the agreement shall be liable to cancellation and thereafter the water-supply shall be stopped.

(5) The applicant shall construct full proof effluent discharge plant before commissioning of the project. For proper test of such effluent there shall be computerised testing system and the applicant shall give details of effluent discharged in the natural source (in river and nala).

(6) For construction of head works and control mechanism i.e, intake well, pump house and other related facilities, M/s _____ Ltd. will get the land leased in their favour through IDCO as is done in respect of any other Government land required by the industry. IDCO will make available land on long term lease to M/s _____ Ltd. The continuance of the lease agreement will be subject to the condition that the industry shall pay water charges as per prevailing water rate and all other dues of Government and IDCO from time to time.

(7) M/s _____ Ltd. would be required to pay advance water charges for a year in shape of Bank Draft in favour of Executive Engineer concerned or in shape of FDR duly discharged by the company as non interest bearing security deposit to be adjusted against defaults. The water charges will be paid by the company one month in advance.

(8) In case of water supply for the M/s _____ Ltd. is to be met from a common source through a sharing mechanism, such common infrastructure for drawal of water will be constructed, maintained and operated either by IDCO or Special Purpose Vehicle (SPV) after taking due clearance from IDCO. Water will be supplied to M/s _____ Ltd. by IDCO/SPV and they would also be liable for payment of water rate to the Government and will in turn have arrangements as similar therein as clause (6) and (7) of this agreement.

(9) M/s _____ Ltd. would compensate the loss of power generation if any due to drawal of water from _____ (source)

(10) They will not disturb the normal flow of water so that riparian rights in the down stream will be affected and the company shall have no claim on the account.

(11) The drawal mechanism for raw water and disposal system of effluent to be established by the industry without disturbing existing eco system and environmental set up.

(12) The Rehabilitation and Resettlement Action Plan/ Welfare Action Plan, if so required will be prepared in conformity with the current Orissa Rehabilitation and Resettlement Policy and executed by the company at its own cost under the supervision of the Water Resources Department and the Collector of the District. _____

(13) M/s _____ Ltd. shall not claim as a matter of right to get the desired quantity of water during non-monsoon and lean period to meet their full industrial use and the company has to make adequate storage facility in their own land for supply of water to their plant during such period.

(14) The safety design of all the structures lies fully on the company.

(15) In case of any dispute arising out of this agreement, the same shall be referred to Government and the decision of the Government in Water Resources Department shall be final.

(16) Any surplus power from the Captive Power Plant shall be sold by M/s _____ Ltd. to GRIDCO or any other entity to be notified by the State Government under mutually acceptable terms and conditions.

(17) The allocation of matter will automatically lapse if the company does not use the water for the purpose applied for within three years of allotment.

(18) This agreement shall be valid for a period of 3 years subject to renewal of the same by the Executive Engineer. For renewal of the agreement, the concerned drawee has to apply minimum three months before the expiry of the agreement.

(19) If the industry is found to be drawing water unauthorisedly before signing the agreement / installation of flow meter, the concerned Executive Engineer, will charge a penal rate at six times the normal rate as provided in Schedule II and III.

(20) Government shall be at liberty to review the water allocation unilaterally in case of exigencies.

(21) The Executive Engineer or his authorized representative reserves the right to inspect all installations of drawal and disposal mechanism during and after construction including intake structure, flow meter and treatment plant.

(22) M/s_____ will have to show clearly water management plan as to what storage facility the company will create for the lean season and to what extent and how the water is going to be recycled which shall be a part of the project report of the unit.

(23) M/s_____Ltd. may engage at their own cost consultant(s) experienced in the field to take up field investigations, prepare design and drawing to set up the water-supply scheme for drawing water from Government water source/Irrigation works for their proposed plant. The actual work will start after approval of the scheme by the competent authority of Water Resources Department who can inspect the work during the construction.

(24) The exact place for lifting will be decided in consultation with the authority of Water Resources Department.

(25) Department of Water Resources shall not be held responsible for non-availability of water due to dry season, disruption, repair and maintenance of canal/reservoir.

(26) The agreement to be executed by the industry/ commercial establishment with local authority/Executive Engineer must be approved by the Department of Water Resources before drawal of water.

In witness whereof the parties hereto have put their hands and seals the day and year first above-written.

In the presence of witnesses :

1.

2.

Signature of applicants

1.

2.

In the presence of witnesses :

1.

2.

Signature of sureties

1.

2.

In the presence of witnesses :

1.

2.

Signature of the Executive Engineer
acting in the premises for and on behalf
of the Governor of Orissa” .

10. In the said rules, Form ‘S’, Form ‘S-1’, Form ‘T’ and Form ‘U’ shall be omitted.

11. In the said rules, for Form V, the following Form shall be substituted.

“FORM ‘V’

[See Rule 23-A (2)(i) and Rule 26]

Notice of demand

Office of the Executive Engineer

No.....

Date.....

To,

M/s..... (Name of the industrial/ commercial establishment)

Notice is hereby given that you have been drawing/lifting water from the Government water source/Irrigation works as shown in the format below for use in your industrial/commercial (specify) establishment during the month of you have consumed gallons/liters of water in your industrial/commercial establishment. For such consumption of water you have been assessed with an amount as shown in the Format below towards Special Water Rate/ License Fees in pursuance of the agreement.

You are hereby directed to deposit the fees so assessed in the office of the Executive Engineer noted below by failing which action as deemed proper under the provisions of the Act and rules shall be taken against you.

F O R M A T

Name of the Government water	Khata/ Plot No.	Quantum of water drawn during the	Rate of Special water rate/	Total amount assessed	Arrear up to previous month	Cumulative Demand for the month	REMARKS
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

Signature

(Designation of the officer issuing the notice of demand)".

[No. 30156—III-W-7/2010-R.&D.M..]

By order of the Governor

R. K. SHARMA

Commissioner-cum-Secretary to Government